

DATED

[DATE]

(1) [INSERT SEMBCORP ENTITY]

(2) [INSERT CONTRACTOR ENTITY]

IChemE Form of Contract

GC3: General Conditions being an amended IChemE Form of Contract for Minor Works (the 'Orange Book, 3rd edition, 2018)

relating to [insert project description]

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**GC3: GENERAL CONDITIONS BEING AN AMENDED ICHEME FORM OF CONTRACT FOR MINOR WORKS (THE
'ORANGE BOOK, 3RD EDITION, 2018)**

1. Definitions, interpretation and notices

1.1. Unless the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them:

'Advance Payment' means the advance payment referred to in Clause 21.12 (*Payment*).

'Advance Payment Bond' means the bond referred to in Clause 21.12 (*Payment*).

'Affiliate' means any entity or person that directly or indirectly Controls, is controlled by or is under direct or indirect common Control with the relevant party.

'Anti-Bribery Laws' means all applicable laws, statutes, rules, regulations, orders and codes of any governmental authority or jurisdiction as may be amended, supplemented and/or modified from time to time. That prohibit the bribery of, or the providing of facilitation payment or other benefits to, any Official and/or Close Associates of the same including, without limitation the Bribery Act 2010.

'Applicable Sanctions' means any sanctions, as may be added, amended, supplemented and modified from time to time, administered by any governmental authority or jurisdiction applicable to the Contractor, or to its business and any applicable international law and regulations pertaining to the detection, prevention and reporting of potential money laundering and terrorist financing activities.

'Approved Programme' means the programme of work approved by Sembcorp's Representative in accordance with Clause 8.3 (*Times of Completion and Approved Programme*).

'Background Intellectual Property' means any Intellectual Property Rights that are used in the course of or in connection with the provision of the Works that were created and/or developed (a) independently of the Contract; and/or (b) before the effective date of the Contract.

'CDM Regulations' means the Construction (Design and Management) Regulations 2015 together with the recommendations contained in the most recent official guidance relating to such regulations.

'Close Associate' means in relation to any Official, means an individual who is known to be closely connected to the Official, either socially or professionally such as, but not limited to: (i) a partner of the Official; (ii) an employee or employer of the Official; (iii) a person accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the Official; or (iv) a person whose directions, instructions or wishes the Official is accustomed or under an obligation, whether formal or informal, to act in accordance with.

'Commencement Date' means the date of commencement of the Works as set out in the Contract Agreement.

'Completion' means that the Permanent Works or a specified section thereof have met the criteria, including any specified tests for Completion defined in Schedule 4 (*Take Over procedures*). Schedule 3 (*Times and stages of Completion*) may provide for specified sections of the Works to be completed by dates earlier than the date stated in the Contract for Completion of the whole of the Works. The term 'section' shall be construed accordingly.

'Confidential Information' has the meaning given in Clause **Error! Reference source not found.** (*Confidentiality*).

'Construction Products Regulations' means the Construction Products Regulations 2013 (SI 2013/137), (305/2011/EU), 1991 (SI 1991/1620) respectively, and the Construction Products Directive (89/109/EC).

'Contract' means the contract between Sembcorp and the Contractor for the Works made pursuant to the Contract Agreement, incorporating these Conditions.

'Contract Agreement' means the document to which these Conditions are annexed, which records the terms of the Contract between Sembcorp and the Contractor and which is signed by the parties together with any schedules thereto.

'Contract Price' means the consideration payable to the Contractor for the Works as set out in the Contract Agreement.

'Contractor' means the person named as such in the Contract Agreement or his/its permitted assigns.

'Contractor's Equipment' means all equipment, construction plant, vehicles, temporary buildings and offices, materials, tools or other things brought on to the Site by the Contractor or a Subcontractor for carrying out the Works but not for incorporation in the Permanent Works.

'Contractor's Representative' means the person named as such in the Contract Agreement.

'Control' means the beneficial ownership of more than fifty per cent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **'Controls'** and **'Controlled'** and **'under common Control'** shall be interpreted accordingly.

'Controller', 'Processor', 'Data Subject', 'Personal Data', 'Personal Data Breach', 'processing' and 'appropriate technical and organisational measures' have same meanings as defined in the Data Protection Legislation.

'Data Protection Legislation' means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

'Data Security Legislation' means all applicable data security legislation in force from time to time in the UK including the NIS Regulations as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the security of data.

'Decision' means any decision, certificate, notification, instruction, order, agreement, approval, rejection or consent.

'Defect' means any part of the Works which does not comply with the Contract, provided that such matter shall not be a Defect if it is caused by:

- (a) normal wear and tear; or
- (b) a failure by Sembcorp to operate and maintain the Permanent Works in accordance with any Operating and Maintenance Manuals provided by the Contractor and/or with good engineering practice; or
- (c) a failure by Sembcorp to comply with any of its material obligations under the Contract.

'Defects Liability Period' means a period of twenty-four (24) months commencing from the date specified in a Take Over Certificate as that upon which Completion took place.

'Delay Liquidated Damages' mean the sums (if any) payable by the Contractor to Sembcorp upon the occurrence of the event specified at Clause **Error! Reference source not found.** (*Delays*) as delay liquidated damages, such sum being more particularly set out in the Contract Agreement.

'Documentation' means documents in paper or electronic form, including drawings, technical software, images, designs, manuals or records.

'Facility' has the meaning stated in the Contract Agreement.

'Final Certificate' means the document issued by Sembcorp's Representative in accordance with Clause 19.2 (*Final acceptance*) stating that the Works or a specified section thereof, as the case may be, is finally complete as from the date of the certificate.

'Final Date for Payment' has the meaning stated in Clause 21.5 (*Payment*).

'Force Majeure' shall mean any exceptional and unforeseeable circumstance beyond the reasonable control of the parties which prevents or impedes the due performance of the Contract by either party including the following:

- (a) government action or trade embargo; or
- (b) war, hostilities or acts of terrorism; or
- (c) riot or civil commotion; or
- (d) epidemic; or
- (e) earthquake, flood, fire or natural physical disaster; or
- (f) exceptionally severe weather conditions or the consequences thereof; or
- (g) denial of the use of any railway, port, airport, shipping service or other means of public transport; or
- (h) industrial disputes, other than any solely confined to the Contractor or its Subcontractors or their personnel.

Any breach of contract, fault, delay or other act or omission of the Contractor or its Subcontractors, including any outages of the Contractor's facilities or Contractor Equipment caused by normal wear and tear or by failure to properly maintain, shall not be considered Force Majeure.

Any prevention of or impediment to a Party's performance of the Contract arising as a result of the 'Coronavirus' pandemic (and the disease known as COVID-19) shall not be considered Force Majeure.

The mere shortage of labour, materials, or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure

'Free-Issue Materials' means machinery, plant and other items of equipment and materials intended to form part of the Works and other things needed in its operation, to be supplied by Sembcorp or any entity within Sembcorp's Group, including as specified in Schedule 2 (*Responsibilities of Sembcorp*).

'IChemE' means the Institution of Chemical Engineers.

'Intellectual Property Rights' means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

'Legislation' means all applicable laws, statutes, bye-laws, regulations and other measures having the force of law.

'Necessary Consents' means any permissions, authorisations and/or consents obtained by and/or on behalf of Sembcorp in respect of the Site or location at which the Works are to be executed.

'Notice' means a formal notice issued by Sembcorp to the Contractor or by the Contractor to Sembcorp in accordance with Clause 1.8 (*Definitions, interpretation and notices*).

'NIS Regulations' means the Networks and Information Systems Regulations 2018 (SI 2018/506).

'Official' means (i) any officer or employee or any governmental authority or any department, agency or instrumentality thereof or any person acting in an official capacity on behalf of any such governmental authority, department, agency or instrumentality; (ii) any political party; (iii) any official of a political party; (iv) any candidate for political office; or (v) any officer or employee of a public international organisation such as the United Nations.

'Operating and Maintenance Manuals' means any operating and maintenance manuals relating to the Works to be supplied by the Contractor prior to Completion and which are sufficiently detailed to enable Sembcorp to safely and adequately operate and maintain the Works.

'Permanent Works' means the permanent works as described in the Specification to be constructed at the Site including any software.

'Sembcorp' means the person named as such in the Contract Agreement or its permitted assigns and/or successors in title.

'Sembcorp's Group' means the group of companies comprising any entity or person that directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with Sembcorp.

'Sembcorp's Representative' means the person named as such in Contract Agreement subject to Clause 4.4 (*Sembcorp's responsibilities*).

'Site' means the area within which the Permanent Works is to be constructed, together with all other areas as the Contractor shall be permitted to use in connection with the Works, as specified in Schedule 1 (*Description of the Works*).

'Site Rules' means the policies, procedures and guidance for working at the Site, including as set out in the Sembcorp Site Rules, as the same may be amended from time to time, an up to date copy of which can be accessed at <https://www.sembcorpenergy.co.uk/policies-and-conditions/>.

'Specification' means the specification forming part of the Contract, which sets out the technical definition of the Permanent Works.

'Subcontractor' means any subcontractor of any tier to whom the carrying out of any part of the Works has been subcontracted.

'Temporary Works' means all temporary works and structures of every kind constructed at the Site by the Contractor to facilitate construction of the Permanent Works.

'Take Over Certificate' means a document issued by Sembcorp's Representative certifying that the Works or a section thereof has met the criteria for Completion set out in Schedule 4 (*Take Over procedures*) and specifying the date upon which Completion took place and **'Take Over'**, **'Taking Over'** and **'Taken Over'** shall be construed accordingly.

'Variation' has the meaning stated in Clause 10.1 (*Variations and claims*).

'Variation Order' means an order by which a Variation is ordered or other notification made to the Contractor in accordance with the Contract.

'VAT' means value added tax chargeable under the Value Added Tax Act 1994.

'Waste Material' means:

- (a) any substance, material or object that may pose a threat of pollution to the environment if not properly disposed of or which otherwise possess hazardous properties i.e. carcinogenicity, flammability, toxicity and/or corrosivity (such term including but not being limited to substances such as toxic waste, asbestos, as well as to fluorescent tubes);
- (b) any other substance material or object regulated as waste under Legislation, including but not limited to Directive 2008/ 98/EC, the Environmental Protection Act 1990, the Hazardous Waste (England and Wales) Regulations 2005 and the List of Wastes (England) Regulations 2005; and
- (c) any other substance (whether solid, semi-solid or liquid), material or object which the Employer wishes the Contractor to dispose of.

'Works' means the design, engineering and other services to be provided by the Contractor including the provision and construction of the Permanent Works and any Temporary Works and the subsequent dismantling or removal of the Temporary Works when no longer required, and any other work to be carried out by the Contractor in accordance with the Contract.

'Works Deliverables' mean any output of the Works and any other documents, products and materials provided by the Contractor to Sembcorp pursuant to the Contract.

- 1.2. The singular shall include the plural and the plural the singular except where the context otherwise requires.
- 1.3. No decision required under the Contract shall be unreasonably refused or delayed.
- 1.4. References to:
 - (a) **'day'** shall mean a calendar day; and
 - (b) **'includes'** or **'including'** shall mean includes or including without limitation.
- 1.5. Any communication in accordance with or in connection with the Contract shall be in writing, which shall include handwritten, typewritten or printed documents sent by hand, post, email or other means resulting in a permanent record.
- 1.6. The headings in the Contract together with any accompanying introductory notes and/or guidance shall not form part of the Contract nor shall they be taken into consideration in the interpretation of the Contract.
- 1.7. Any reference to a **person** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or associates.
- 1.8. Any Notice to be served by one party on the other shall:

- (a) be contained in a separate document and shall state the number(s) of the Clause(s) or Clause(s) in the Contract under which the Notice is issued; and
- (b) be sent to and shall be sufficiently delivered if:
 - (i) delivered to the place stated in the Address for Service against a receipt; or
 - (ii) sent to the postal address stated in the Address for Service by Registered Post, Recorded Delivery or Special Delivery Post; or
 - (iii) sent to the email address stated in the Address for Service.

A Notice shall be effective on the date on which it is deemed to have been received, namely:

- (a) in the case of a Notice, delivered to the place stated in the Address for Service, such Notice shall be deemed to have been received on the day delivered at that place if delivered at or before 5.00 pm on a day on which banks in the vicinity of the address stated in the Address for Service shall have been open for normal business (a 'Business Day');
- (b) in the case of a Notice sent by Registered Post, Recorded Delivery or Special Delivery Post to the postal address stated in the Address for Service, such Notice shall be deemed to have been received on the day and at the time it was recorded as delivered by Registered Post, Recorded Delivery or Special Delivery; or
- (c) in the case of a Notice sent by email to the email address stated in the Address for Service, on the date and at the time at which it shall be recorded as having been so sent,

provided in all cases that if the date and time of such deemed receipt shall not be on a Business Day, such Notice shall be deemed to have been received at 9.00am on the next Business Day.

Either party may at any time by Notice in writing to the other change the Address for Service including details of the name of the person to whom a Notice should be addressed, the postal address or the email address stated in the Contract Agreement.

1.9. Sembcorp and the Contractor shall in all matters relating to the Contract comply with all Legislation.

2. Basis of Contract and Co-operation

- 2.1. The Contract shall be formed and shall be binding on the parties where these Conditions and any Special Conditions are annexed to a Contract Agreement upon both parties duly executing the Contract Agreement.
- 2.2. These Conditions shall apply to the supply of all goods delivered and services provided in connection with the Works, to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Contractor waives any right which it otherwise may have to rely on such terms any conditions.
- 2.3. The parties and Sembcorp's Representative shall co-operate with each other in the discharge of their respective obligations under the Contract with the aim of satisfactorily completing the Works in accordance with the Contract.
- 2.4. The parties shall deal fairly, openly and in good faith with each other, in particular, each party shall promptly disclose full information to the other concerning any matter which will or may prevent the Works being completed in accordance with the Contract. The parties shall work together in a manner consistent with their respective obligations under the Contract to resolve or mitigate the effect of any such matter.

3. Contractor's responsibilities

- 3.1. The Contractor shall carry out and complete the Works in accordance with the Contract.
- 3.2. All work carried out by the Contractor shall be carried out with sound workmanship and materials, safely and in accordance with good engineering practice and shall be to the reasonable satisfaction of Sembcorp's Representative.
- 3.3. The Contractor shall, and shall procure that its employees, agents and Subcontractors shall comply with all Legislation and Necessary Consents relating to the Works, and shall hold harmless and indemnify Sembcorp against any claims or proceedings arising out of any breach of the same by the Contractor or its employees, agents and Subcontractors.
- 3.4. The Permanent Works as completed by the Contractor shall comply with the Contract and shall be in every respect fit for the purpose for which they are intended as defined in the Specification or any other provision of the Contract.
- 3.5. The Contractor shall:
 - (a) comply with all Site Rules and any other policies, standards, rules and/or procedures which are applicable to the Works and shall ensure that its Subcontractors observe these likewise; and
 - (b) promptly comply with instructions, authorisations and notices given by Sembcorp's Representative in accordance with the Contract.
- 3.6. The Contractor shall at all times have and maintain adequate resources available for the proper and timely carrying out of the Works, including financial resources, and competent, appropriately qualified, trained and experienced personnel.
- 3.7. If so stated in Schedule 1 (*Description of the Works*) the Contractor shall appoint competent persons who shall be responsible for the checking and approval of all Documentation provided by the Contractor. No Documentation shall be both checked and approved by the same individual.
- 3.8. The Contractor's Representative shall be an appropriately qualified and experienced member of the Contractor's staff. The Contractor's Representative shall have full authority to act on the Contractor's behalf in connection with the Contract and shall, if so required by Sembcorp's Representative, be present at the Site during working hours. The Contractor shall not replace the Contractor's Representative without the prior approval of Sembcorp's Representative.

- 3.9. Communications from Sembcorp or Sembcorp's Representative received by the Contractor's Representative shall be deemed to have been received by the Contractor.
- 3.10. The Contractor undertakes and warrants to Sembcorp that it has not and will not specify any products or materials for use in the Works which at the time of use are generally known to be deleterious to the health and safety of any person, or posing a threat to the structural stability, performance or physical integrity of the Works, or not being in accordance with any British standards and codes of practice, or any applicable agreement certificate issued by the British Board of Agrément, or having been supplied or placed on the market in breach of the Construction Products Regulations.
- 3.11. The Contractor shall, at all times, prevent any trespass by the Contractor (or its employees, agents or Subcontractors (including the oversailing of a tower crane jib or erection of scaffolding or hoarding) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of such property and members of the public.
- 3.12. The Contractor shall, at all times, prevent any nuisance or interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker of which the Contractor is or ought to reasonably have been aware, arising out of the performance of the Works. The Contractor shall assist Sembcorp in defending any action or proceedings in relation to any such nuisance or interference and shall indemnify Sembcorp from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default in performing its obligations under this Clause 3.12.
- 3.13. The Contractor shall, except as stated in Schedule 2 (*Responsibilities of Sembcorp*), be responsible for all power, water and other services it may require. To the extent stated in Schedule 2 (*Responsibilities of Sembcorp*), the Contractor may use such specified services as may be available at the Site without charge to Sembcorp. The Contractor shall at its risk and cost provide any apparatus necessary for use of such services.
- 3.14. The Contractor shall in performing its obligations under the Contract, use all reasonable endeavours to implement a suitable energy management procedure which minimises the energy consumption of any items used in connection with the Works and to minimise the impact of the Works on the energy consumption of the Facility.

4. Sembcorp's responsibilities

- 4.1. Sembcorp shall give the Contractor access to and possession of the Site or parts of the Site (as defined in Schedule 1 (*Description of the Works*)) for the purposes of carrying out the Works:
 - (a) by or before the relevant date or dates specified in the Contract; or
 - (b) if no such date or dates are specified, then in accordance with the Approved Programme; or
 - (c) if there is no Approved Programme, or if no such date or dates are specified, then in reasonable time to permit the Contractor to perform its obligations under the Contract.

Such access and possession shall continue until the issue of the Take Over Certificate.

Following issue of the Take Over Certificate and in accordance with the Contract Sembcorp shall allow such access as is necessary for the Contractor to correct Defects and to perform its other rights and obligations under the Contract.

- 4.2. If the Contract provides in Schedule 2 (*Responsibilities of Sembcorp*) that Sembcorp is to carry out any work or provide any Free-Issue Materials which are necessary to permit the carrying out and completion of the Works by the Contractor then, subject to any express description thereof in the Contract, such work and Free-Issue Materials shall be carried out and provided:
 - (a) with sound workmanship and materials, and in accordance with good practice and Legislation;
 - (b) in a manner consistent with the proper carrying out and completion of the Works in accordance with the Contract;
 - (c) at the times specified in the Contract, or if no such times are specified, at reasonable times having regard to any date or period stated in Schedule 3 (*Times and stages of Completion*), the Approved Programme, the actual progress of the Works and all other relevant circumstances;
 - (d) at no cost to the Contractor unless otherwise where stated in Schedule 5 (*Contract Price and payment*).
- 4.3. Sembcorp shall ensure that the Contractor is provided with all Documentation listed in the Specification and any such further information, instructions and Decisions to be provided by Sembcorp, or that the Contractor may reasonably require, so as not to prejudice the Contractor's ability to execute and complete the Works in accordance with the Contract.
- 4.4. Sembcorp may from time to time appoint some other individual as Sembcorp's Representative in place of the individual previously so named or appointed and such appointment shall have effect from the date when the Contractor receives Notice of the appointment.
- 4.5. The Contractor shall not be liable for the consequences of any errors or omissions in or arising from work carried out by Sembcorp or on Sembcorp's behalf by others (other than in respect of any design or information which the Contractor is required to verify in accordance with its obligations under the Contract).

5. Intellectual Property Rights

- 5.1 All Intellectual Property Rights in any specifications, documents, ideas, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
 - (a) provided to the Contractor by Sembcorp shall remain as Sembcorp's property; or
 - (b) prepared by or for the Contractor pursuant to or in relation to the performance of the Contract
 shall belong to Sembcorp.
- 5.2. The Contractor shall obtain necessary approval before using any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall at no cost to Sembcorp,

procure that the owner of the Intellectual Property Rights grant to Sembcorp a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to Sembcorp an authorised sub-licence to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable and shall include the right to sub-licence, transfer, or assign to any other third party providing Works and/or Works Deliverables to Sembcorp.

- 5.3. All Background Intellectual Property shall remain the exclusive property of the party owning it and this Contract does not affect the ownership of any Background Intellectual Property of a party. No licence to use any Background Intellectual Property is granted or implied by this Contract except the rights explicitly granted in this Contract.
- 5.4. The Contractor grants to Sembcorp, or shall procure the direct grant to Sembcorp, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence (including the right to sub-licence to its Affiliates and sub-contractors) to use such Contractor's Background Intellectual Property as may be required for the purpose of receiving and using the Works and/or Works Deliverables.
- 5.5. Sembcorp grants the Contractor a fully paid-up, non-exclusive, royalty-free and non-transferable licence to use Sembcorp's Background Intellectual Property for the term of the Contract and for the sole purpose of providing the Works and/or Works Deliverables to Sembcorp. Any derivations or modifications of Sembcorp's Background Intellectual Property howsoever created will be the property of Sembcorp.
- 5.6. Where the Contractor creates or generates any new Works Deliverable (including but not limited to computer software programs and Documentation, algorithms, program code, any inventions and ideas, written material or other property, tangible or intangible) in providing the Works and/or arising out of or resulting from the performance of this Contract then Sembcorp will own the entire right, title and interest in and to all Intellectual Property Rights in the newly created Works Deliverable. The Contractor shall by way of present assignment of future Intellectual Property Rights, do all things necessary to ensure that all such Intellectual Property Rights are assigned to Sembcorp absolutely. Sembcorp may take such steps as it may decide from time to time, at its expense and sole discretion, to register and maintain any protection for that Intellectual Property Rights. The Contractor shall do all such things and sign and execute all such documents as may reasonably be required in order to perfect, protect or enforce any of the Intellectual Property Rights transferred, assigned or granted to Sembcorp hereunder. The Contractor shall obtain waivers of all moral rights in the Works Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 5.7. The Contractor shall treat all Works Deliverables as Confidential Information of Sembcorp, and shall impose the requirements of Clauses 11.2 to 11.4 (inclusive) (*Confidentiality*) on each of its personnel and/or permitted sub-contractors.
- 5.8. The Contractor agrees that Sembcorp is entitled to make any changes, have the changes made or require the Contractor to make any changes to the Works Deliverables (material or otherwise) which Sembcorp in its sole discretion considers necessary or desirable, including amendments to ensure that the Works Deliverables conform to Sembcorp's requirements and is updated and accurate.
- 5.9. The Contractor shall notify Sembcorp as soon as practicable if the Contractor becomes aware:
 - (a) of any infringement or suspected infringement of the Intellectual Property Rights or moral rights of any third party arising from the Works and/or Works Deliverables or the publication, distribution and making available of the Works and/or Works Deliverables by Sembcorp; or
 - (b) of any infringement or suspected infringement by any third party of the Intellectual Property Rights in the Works and/or Works Deliverables.
- 5.10. Except as may be necessary for either party to carry out its obligations under the Contract, neither Party shall under any circumstances whatsoever use the other party's name, trade names, trademarks, service marks, logos, or other symbols or other source identifying devices, or combinations or variations thereof, or the name of any employee of either party, in any public announcement, news release, advertising, or promotional literature, without first obtaining the written consent and approval of the other party and subject always to Clause 27.1 (Miscellaneous).

6. Subcontracting and third party rights

- 6.1. The Contractor shall not, without the previous consent of Sembcorp, transfer any benefit or obligation under the Contract to any other person in whole or in part. The Contractor may, however, without such consent, transfer the right to receive any money which is or may become due to him under the Contract.
- 6.2. The Contractor may not subcontract the whole or any part of the Works unless otherwise agreed with Sembcorp's Representative. The subcontracting by the Contractor of any part of the Works shall not relieve the Contractor in any way from its obligations under the Contract and the Contractor shall remain fully responsible for all acts and omissions of its Subcontractors.
- 6.3. All subcontracts shall contain the unilateral right of cancellation by the Contractor in the event of termination of the Works in accordance with Clause 23.1 (*Termination*).
- 6.4. Save as expressly provided in Clause 6.5, no person other than a party to this Contract shall have any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 6.5. Any entity within Sembcorp's Group may each in its own right enforce the provisions of this Contract subject to, and in accordance with, the Contracts (Rights of Third Parties) Act 1999. Notwithstanding that other entities within Sembcorp's Group may enforce rights under the Contract which have been given for their benefit, the parties to the Contract may terminate, vary or amend the Contract, or compromise or settle any claim under the Contract (including in respect of any

rights of entities within Sembcorp's Group) without reference to the interests of, or the consent of, any entity within Sembcorp's Group that is not a party to the Contract.

- 6.6. No subcontract shall contain any provision that makes payment to the Subcontractor by the Contractor dependent upon the receipt by the Contractor of any payment due under the Contract.
- 6.7. The Contractor shall include in any subcontract under which Confidential Information is to be disclosed to the Subcontractor a provision that the Subcontractor shall observe the same obligations of confidentiality as those of the Contractor, and that Sembcorp shall be entitled to enforce such provision directly against the Subcontractor.

7. Sembcorp's Representative

- 7.1. Sembcorp's Representative shall have full authority to act on behalf of Sembcorp in connection with the Contract (save that he shall have no authority to relieve the Contractor of any of its obligations under the Contract) and:
 - (a) Sembcorp shall cause Sembcorp's Representative to perform reasonably and in a timely manner every act required under the Contract to be performed by Sembcorp's Representative;
 - (b) any obligation stated under the Contract to be an obligation of Sembcorp's Representative shall be deemed to be an obligation of Sembcorp;
 - (c) Sembcorp shall be responsible for any act, neglect or omission of Sembcorp's Representative as if it were an act, neglect or omission of Sembcorp; and
 - (d) in all matters where Sembcorp's Representative is required or authorised under the Contract to exercise his discretion or make a judgment or form an opinion he shall do so impartially and with the skill and judgment of an appropriately qualified professional.
- 7.2. Sembcorp's Representative's approvals, authorisations, notices, decisions or instructions shall be in writing. No oral approval, authorisation, notice, decision or instruction given by Sembcorp's Representative shall be valid unless confirmed in writing by Sembcorp's Representative within five (5) working days.

8. Times of Completion and Approved Programme

- 8.1. The Contractor shall commence the Works on the Commencement Date or, if no such date is specified, as soon as reasonably practicable (but in any event not later than fourteen (14) days) following receipt of an instruction to commence the Works from Sembcorp's Representative unless otherwise agreed. Where the Works are to be undertaken in more than one phase, commencement of each phase shall be subject to the same procedure.
- 8.2. Subject to Clause 9 (*Delays*), the Contractor shall complete the Works or any specified section on or before the date, or within the period, specified in Schedule 3 (*Times and stages of Completion*).
- 8.3. The Contractor shall within the time stated in Schedule 3 (*Times and stages of Completion*), or where no such time is stated, within fourteen (14) days of the date of the Contract, prepare and submit to Sembcorp's Representative for his approval a programme of work setting out in any manner that Sembcorp's Representative may reasonably require the sequence in which and dates by which the Contractor proposes to perform his obligations under the Contract and the date(s) by which the Contractor reasonably requires that Sembcorp should provide any further Documentation or information or Free Issue Materials or take any other action to permit the Contractor to perform his obligations. The programme shall take account of all matters which may affect the completion of the Works. If the programme submitted by the Contractor is consistent with any dates and periods specified in the Contract and is otherwise reasonable, Sembcorp's Representative shall approve it and it shall be the Approved Programme.
- 8.4. The Contractor shall proceed diligently with the Works in accordance with the Approved Programme.
- 8.5. The Contractor shall, if it becomes aware of any delay or the likelihood of any delay to the Approved Programme, immediately notify Sembcorp's Representative of the circumstances and the actual or estimated duration of the delay and the action it has taken, or proposes to take, to avoid or minimise the delay.

9. Delays

- 9.1. If the Contractor is delayed in the performance of any of its obligations under the Contract by any of the matters specified in Clause 9.6 he shall notify in writing Sembcorp's Representative as soon as possible, and in any event within fourteen (14) days, after becoming aware of the delay.
- 9.2. As soon as reasonably possible after that, the Contractor shall notify in writing Sembcorp's Representative of any extension to any date or period specified in the Contract for the completion of such obligations as he considers would be fair and reasonable in the circumstances. The Contractor shall keep records made at the time of the circumstances, extent and effect of such delay.
- 9.3. Sembcorp's Representative shall as soon as possible, and in any event within fourteen (14) days of receipt of the Contractor's notification, respond as to the extension to any date or period specified in the Contract that Sembcorp's Representative considers would be fair and reasonable based on the information available to him at that time and issue a Variation Order stating the appropriate extension. Any such Variation Order issued pursuant to this Clause 9 may not necessarily include an adjustment to the Contract Price.
- 9.4. Sembcorp's Representative shall undertake a final review for which the Contractor shall produce all necessary and relevant information, of the need for and amount of any extension sought by the Contractor after the Contractor has completed its obligations in respect of the relevant date or period specified in Schedule 3 (*Times and stages of Completion*).
- 9.5. In the event of either party becoming aware of the occurrence of Force Majeure, it shall notify the other party as soon as reasonably practicable following the start of the incidence of Force Majeure and the steps being taken to remedy it and an estimate (where reasonably possible) of the date when it is likely to end.
- 9.6. The matters entitling the Contractor to apply for an extension of time are delays caused by:

- (a) Force Majeure; or
 - (b) a Variation ordered by Sembcorp's Representative in accordance with Clause 10.2 (*Variation and claims*); or
 - (d) suspension of the Works in accordance with Clause 22.1 (*Suspension*), except for reasons attributable to the Contractor; or
 - (e) a breach of the Contract by Sembcorp; or
 - (f) any impediment or prevention by Sembcorp, or
 - (g) delays in the carrying out of Sembcorp's responsibilities pursuant to Clause 4 (*Sembcorp's responsibilities*).
- 9.7. The Contractor shall not be entitled to any extension of time (or if relevant to any other relief or costs) on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or its employees, agents or Subcontractors.
- 9.8. If the Contractor fails to achieve Completion of the Works or any specified section or to do any other thing in accordance with Schedule 3 (*Times and stages of Completion*) or any extension to dates granted therein in accordance with the Contract, the Contractor shall pay Sembcorp the Delay Liquidated Damages, but shall have no liability to pay damages in excess of the maximum (if any) stated in the Contract Agreement and the parties agree that such sums represent a genuine pre-estimate of the loss Sembcorp is likely to suffer as a result of such late performance.
- 9.9. If for any reason attributable to the Contractor, progress of any part of the Works is delayed or is not maintained and if Completion of the Works would be adversely affected if no action were taken, then the Contractor shall at its own cost take measures, or require its Subcontractor(s) to take measures, acceptable to Sembcorp's Representative to eliminate delay or potential delay or mitigate the effect on the timely performance of the Works.
- 9.10. The parties shall at all times use all reasonable endeavours to minimise any delay in the performance of their obligations under the Contract, whatever may be the cause of such delay.
- 9.11. If performance of the Works is substantially prevented by Force Majeure for a continuous period of sixty (60) days, the unaffected party may by Notice to the affected party (and, in the case of termination by the Contractor, such Notice to be copied to Sembcorp's Representative) terminate the employment of the Contractor. In the event of such termination, the rights and obligations of the parties shall be as if Sembcorp had terminated the Contract under Clause 23.2 (*Termination*).
- 9.12. In the event that either party is delayed by Force Majeure each party shall bear its own costs arising from such delay.

10. Variations and claims

- 10.1. A Variation shall mean any change from that stated in the Contract to the Works, to the Site, to the method of working, or to the sequence or the timing of work. The Contractor shall make no Variation except as ordered by Sembcorp's Representative.
- 10.2. At any time during the performance of the Contract Sembcorp's Representative may order a Variation and, subject to this Clause 10, the Contractor shall carry it out as if the Variation were part of the original Contract. The Variation shall be valued in accordance with Clause 10.5.
- 10.3. If the Contractor intends to claim any additional payment which does not arise out of a Variation, he shall notify in writing Sembcorp's Representative of such intention as soon as reasonably possible, and in any event within fourteen (14) days, after becoming aware of the event which gives rise to the claim, and shall establish and maintain records relevant to the claim, together with such supporting particulars and additional records as Sembcorp's Representative may direct in order to properly assess the Contractor's claim.
- 10.4. If the Contractor fails to give notice of a claim within the period described in Clause 10.3, no adjustment to the Contract Price shall be granted and the Owner shall be discharged from all liability in connection with the claim.
- 10.5. Any adjustment to the Contract Price, whether by addition or deduction, in respect of any Variation or claim shall be such amount as Sembcorp's Representative and the Contractor may agree. In the absence of such agreement, Sembcorp's Representative shall as soon as practicable decide such amount which shall in all circumstances be reasonable having regard to Schedule 5 (*Contract Price and payment*). Any such agreement or decision shall be recorded by means of a Variation Order.

11. Confidentiality

- 11.1. '**Confidential Information**' shall mean all Documentation and other technical or commercial information in any form obtained directly or indirectly from Sembcorp or entity within Sembcorp's Group by the Contractor, or directly or indirectly from the Contractor by Sembcorp, or which is generated by the Contractor or any Subcontractor in connection with the Contract, whether before or after the date of the Contract other than information:
- (a) which is or becomes publicly available other than by any unauthorised action of either of the parties to this Contract; or
 - (b) which is or comes into the possession of one party other than in breach of a duty of confidence to the other party; or
 - (c) which is expressly approved for disclosure by the party to whom the information relates.
- 11.2. The Contractor shall not, without the previous consent of Sembcorp, use, publish or disclose to any person, nor cause nor permit any of its Affiliates, personnel or Subcontractors to use, publish or disclose any Confidential Information obtained from Sembcorp or entity within Sembcorp's Group other than for the performance of the Works.
- 11.3. Sembcorp shall not without the previous consent of the Contractor use, publish or disclose to any person, nor cause nor permit any of its Affiliates, or personnel to use, publish or disclose to any person any Confidential Information obtained from the Contractor or any Subcontractor otherwise than for the purposes envisaged by the Contract.

- 11.4. The Contractor shall not, other than for the purposes required by the Contract, take or permit to be taken any photograph or other image of the whole or any part of any property of Sembcorp or entity within Sembcorp's Group, or any physical or virtual model of it, without the prior consent of Sembcorp. Any such photograph or other image shall be regarded as Confidential Information within the terms of Clause 11.1.
- 11.5. The Contractor shall not, other than for the purposes of executing its role in accordance with the Contract, publish or disclose:
- (a) the existence of the Contract; or
 - (b) its involvement with the Works; or
 - (c) its carrying out of work for Sembcorp;
- without the prior consent of Sembcorp. Any such information as described at (a), (b) or (c) hereof shall be regarded as Confidential Information within the terms of Clause 11.1.
- 11.6. The obligations in this Clause 11 shall not apply to Confidential Information required to be disclosed by compulsion of law or to protect a legal right.
- 11.7. This Clause 11 shall survive and remain in full force for a period of ten (10) years following the later of the issue of the last Final Certificate under Clause 19 (*Final acceptance*) or a Notice terminating the work or the employment of the Contractor.

12. Ownership of materials

- 12.1. The ownership of materials or equipment provided by the Contractor for incorporation into the Permanent Works shall pass to Sembcorp at whichever is the earlier of the following:
- (a) upon delivery to the Site; or
 - (b) when the Contractor becomes entitled to the final payment in respect of such materials or equipment and such payment has been made.

The Contractor shall insert such provisions in subcontracts as will cause this to happen. Notwithstanding any other provision in the Contract, the Contractor shall not become entitled to inclusion of such amounts within the Contract Price which correspond (or as Sembcorp's Representative reasonably decides correspond) to any materials or equipment where ownership has not or cannot pass to Sembcorp in accordance with this Clause 12.1.

- 12.2. Whenever the ownership of any materials or equipment passes to Sembcorp prior to delivery to the Site, the Contractor shall arrange for the materials or equipment to be marked as Sembcorp's property and shall ensure that they are stored and handled separately from other materials.
- 12.3. When so requested, the Contractor shall provide to Sembcorp's Representative proof of ownership and its transfer to Sembcorp.
- 12.4. The property in any Free-Issue Materials shall at all times be vested in Sembcorp. Neither the Contractor, nor any Subcontractor nor any other person shall have a lien on the Free-Issue Materials (whether paid for by or charged against the Contractor or not) for any sum due to the Contractor, Subcontractor or any other person and the Contractor shall take all steps necessary to ensure that the title of Sembcorp and the exclusion of any lien are brought to the notice of (and incorporated into the contracts and/or arrangements with) all Subcontractors and any other persons dealing with the Free-Issue Materials.

13. Health, safety and environment

- 13.1. Sembcorp and the Contractor shall comply with all health, safety and environmental legislation.
- 13.2. If and to the extent that the Works involve the collection, storage, handling, transportation and/or disposal of any Waste Material by the Contractor, the Contractor shall at all times comply with the provisions of Schedule 6 (*Waste Material Requirements*). Any breach by the Contractor of its obligations under this Clause 13.2 shall for the purposes of Clause 23.3 (*Termination*) constitute a default which is not capable of correction and shall entitle Sembcorp to terminate the Contract immediately.
- 13.3. The Contractor shall be responsible for safety of its own operations and those of any Subcontractors and shall ensure that:
- (a) a safe working environment is maintained at all times;
 - (b) all persons on the Site, whether or not employed by the Contractor or any Subcontractor, are properly protected from risk of injury and danger to health arising out of or in connection with the carrying out of the Works;
 - (c) all property under its control is properly protected from damage or loss;
 - (d) all construction activities are subject to appropriate risk assessment and that relevant construction method statements are issued;
 - (e) any hazardous material is identified and suitable safety notices issued;
 - (f) any hazardous material for which he is responsible is safely contained or removed from the Site; and
 - (g) the Site is at all times kept in a clean and tidy condition.
- 13.4. In addition to the requirement to comply with statutory obligations, laws and regulations, the Contractor shall ensure that its employees, Subcontractors, and anybody working under their control shall be conversant with, and shall at all times comply strictly with, the Site Rules and any other site safety regulations, safe working procedures and health and safety instructions issued to the Contractor from time to time by Sembcorp's Representative or Sembcorp.

- 13.5. The Contractor shall ensure that none of its or any Subcontractor's personnel performs any activity relating to the performance of the Works under the influence of intoxicating liquor, drugs or other similar substances.
- 13.6. The Contractor shall be liable for and indemnify Sembcorp against any environmental pollution arising from its activities at the Site except to the extent that such pollution occurs as a result of compliance with the requirements of Sembcorp.
- 13.7. Without prejudice to the generality of Clause 13.1 and Clause 13.3(d), the Contractor shall comply with the CDM Regulations including:
- (a) where the Contractor is the principal designer, complying with the duties of a principal designer and without charge, preparing and delivering to Sembcorp the health and safety file;
 - (b) complying with regulations 8 to 10 (inclusive) and 15 and where he is the principal contractor regulations 12 to 14 (inclusive); and
 - (c) whether or not the Contractor is the principal contractor complying with the regulations including any directions as referred to in regulation 15, which shall be at no cost to Sembcorp and for which the Contractor shall not be entitled to an extension of time.

14. Site working conditions

- 14.1. The Contractor and its Subcontractors shall have due regard to industrial relations practices and procedures at the Facility and shall act always so as to foster and maintain orderly and productive relations with their employees and the employees of Sembcorp and Sembcorp's other contractors (if any) working at the Facility.
- 14.2. The Contractor and its Subcontractors shall observe the hours and conditions of working embodied in, and pay their employees in accordance with, any national or local industrial or trades agreement that apply to the performance of the Works, whether at the Site or elsewhere.
- 14.3. The Contractor shall perform the Works in such a manner as will not hinder or interrupt Sembcorp's normal operations at the Facility and shall comply with Sembcorp's instructions in this respect.
- 14.4. Sembcorp may use any portion of the Facility, the Site or its other property for its own purposes and may employ other contractors to carry out other activities concurrently with the Works. Sembcorp undertakes to use its reasonable endeavours to ensure that the activities of such other contractors shall be carried out so as not to prejudice or interfere with the performance of the Works by the Contractor and the Contractor agrees (at its own cost) to cooperate, communicate and liaise with Sembcorp and any such other contractors (including attendance at meetings) as Sembcorp may reasonably require.
- 14.5. If Sembcorp's Representative considers that any employee of the Contractor or of any Subcontractor is incompetent or has been guilty of misconduct or has performed inadequately for the requirements of his job, or has failed to comply with the requirements of Clause 13 (*Health, safety and environment*), or whose presence on the Site is considered undesirable for any other good reason, then Sembcorp's Representative shall have the right to require the removal from the Site of the said employee. The Contractor shall promptly comply with any instruction to that effect. Sembcorp shall have no obligation to reimburse the Contractor the cost of replacing the person and the Contractor shall not be entitled to any extension of time for Completion of the Works.
- 14.6. The Contractor acknowledges that it has had the opportunity to inspect the physical conditions (including subsurface conditions) affecting the Site and is deemed to have fully acquainted itself with the same and to have obtained all necessary information as to the risks, circumstances and contingencies which may affect the execution of the Works. Any costs, losses or expenses incurred by the Contractor as a result of its failure to discover or foresee any such conditions (whether the same could have reasonably been discovered or foreseen) shall not result in any adjustment to the Contract Price and/or any additional payment under the Contract, nor shall the Contractor be entitled to an extension of time for Completion.
- 14.7. The Contractor shall not be entitled to rely on any survey, report or information supplied by Sembcorp regarding any such matters referred to in Clause 14.6 and Sembcorp makes no representation or warranty as to the accuracy of such surveys, reports or information.

15. Care of the Works

- 15.1. If the Contract provides for the Permanent Works to be taken over by sections, the references to the Permanent Works in this Clause 15 shall apply as if a reference to the Permanent Works were a reference to a section.
- 15.2. The Works and Free-Issue Materials, from the time of issue to the Contractor for incorporation therein, shall be under the care and control of the Contractor until the Permanent Works are Taken Over by Sembcorp.
- 15.3. The Contractor shall make good any loss or damage to the Works and from the time of issue to the Contractor any Free-Issue Materials that may occur:
- (a) before Take Over of the Permanent Works; and
 - (b) between Take Over and the issue of the applicable Final Certificate, when the loss or damage results from any cause or operation described in Clause 16.1 (a) or (b) (*Insurance*).
- 15.4. The Contractor shall have no liability for loss or damage to the Works and Free-Issue Materials from the time of issue to the Contractor, if such loss or damage is due to a Sembcorp's Risk.

'Sembcorp's Risk' means:

- (a) the use or occupation of the Works (or any part) by Sembcorp, its personnel, consultants, or agents, or other contractors (not being employed by the Contractor); or
- (b) any design or information provided by Sembcorp (other than any design or information which the Contractor is required to verify in accordance with its obligations under the Contract); or

- (c) any wrongful or negligent act or omission of Sembcorp, its personnel, consultants, or agents, or other contractors (not being employed by the Contractor); or
 - (d) riot, war, invasion or hostilities (whether or not war be declared), terrorism, civil unrest, civil war, rebellion, revolution, insurrection or military or usurped power or similar events; or
 - (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
 - (f) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed.
- 15.5. The Contractor shall indemnify Sembcorp against all losses, damages, liabilities, claims, costs and expenses in respect of loss of or damage to the Facility and property of Sembcorp, save to the extent caused by the wrongful or negligent act or omission of Sembcorp.
- 15.6. The Contractor shall indemnify Sembcorp against all damages, liabilities, claims, costs and expenses in respect of loss of or damage to:
- (a) the property of a third party; and
 - (b) the death, illness or injury to a third party;
- to the extent caused by the wrongful or negligent act or omission of the Contractor, any Subcontractor, or the personnel of the Contractor or any Subcontractor.

16. Insurance

- 16.1. The Contractor shall provide and maintain a policy or policies of insurance in the joint names of Sembcorp, the Contractor and Subcontractors, covering all risks (subject to standard exclusions) loss of or damage to the Permanent Works and Temporary Works and any materials including Free Issue Materials from the time of delivery to the Site to the full cost of their reinstatement (or such other sum as may have been agreed) including cover for loss or damage arising from:
- (a) any cause occurring prior to Take Over; and
 - (b) any testing, defect rectification or other activity after Take Over carried out or supervised by the Contractor or any Subcontractor under the Contract.

The insurance shall cover physical damage caused by defective design, materials, workmanship, plan or specification, but shall exclude the cost of replacement or rectification which would have been incurred if replacement or rectification of any Defect in the Works had been put in hand immediately prior to the said physical damage.

The insurance shall contain a waiver of all rights of subrogation against Sembcorp and Sembcorp's Representative.

The insurance shall become effective on the commencement of the Works and shall remain in place until the issue of the last Final Certificate. Unless otherwise agreed the Contractor, as policyholder, shall represent the insured parties in all matters relating to the policy or policies. The Contractor shall not give any release or compromise any claim affecting the interests of Sembcorp without the prior written consent of Sembcorp.

- 16.2. Sembcorp shall insure the Facility and all of its property on or adjacent to the Site against all normal risks including fire, lightning, explosion, storm, , flood, earthquake, aircraft (or articles dropped or falling therefrom), riot and civil commotion, and the interest of the Contractor shall be noted thereon.
- 16.3. The Contractor shall procure or arrange the provision of an all risk policy or policies of insurance in the joint names of Sembcorp, Sembcorp's Representative and the Contractor covering the full replacement value of all materials against loss or damage until delivery to the Site. If the Contractor takes possession of any Free Issue Materials at a location other than the Site, then the policy shall additionally cover such Free Issue Materials from the time when the Contractor first takes possession of them until delivery to the Site.

The insurance shall contain a waiver of all rights of subrogation against Sembcorp and Sembcorp's Representative.

- 16.4. The Contractor shall procure or arrange the provision of a policy or policies of insurance covering loss or damage to the Contractor's Equipment to the full replacement value of the Contractor's Equipment and becoming effective on the commencement of the Works or the date of the Contract Agreement (whichever is earlier) and remaining in place until the issue of the last Final Certificate.

The insurance shall contain a waiver of all rights of subrogation against Sembcorp and Sembcorp's Representative.

- 16.5. The Contractor shall provide and maintain a policy or policies of third party liability insurance with insurers approved by Sembcorp covering liability for death, illness or injury to persons and loss of or damage to property for such sum as the Contractor considers appropriate, but in any event not less than ten million pounds (£10,000,000) in respect of any one incident or series of incidents arising from any one event. The insurance shall contain an indemnity to principals clause. The insurance shall become effective on the commencement of the Works or the date of the Contract Agreement (whichever is sooner) and shall remain in place until the issue of the last Final Certificate.
- 16.6. The Contractor and Sembcorp shall each effect and maintain Employer's Liability insurance in accordance with Legislation.
- 16.7. The Contractor shall arrange and maintain a policy or policies of professional indemnity insurance in respect of the legal liability of the Contractor arising out of or in connection with the carrying out of the Works where and to the extent specified in the Contract. The insurances required under this Clause 16.7 shall be maintained by the Contractor for the duration of the Works and for a further period after the date of the Final Certificate as stated in the Contract or, if no period is stated, for a period of ten (10) years, subject to such insurance being available on commercially reasonable terms.

16.8. The Contractor shall obtain the approval of Sembcorp in respect of the insurances to be provided under Clause 16.5 and 16.7. Each party shall provide to the other details of the other insurances he is required to provide by the Contract or by Legislation. Each party shall also provide details in a timely manner of any additions or restrictions thereto which may be made from time to time. Each party shall provide to the other evidence of the payment of premiums.

16.9. If either party fails to produce satisfactory evidence that he has obtained and maintained any insurance required by the Contract the other party shall be free, having given seven (7) days' notice of its intention, to provide and maintain such insurance and pay the premium as may be necessary for that purpose. The cost of such premium shall be reimbursed by the defaulting party within twenty-eight (28) days of being notified of the amount.

17. Tests and Taking Over

17.1. If the Contract provides for sectional completion of the Permanent Works then the provisions of this Clause 17 shall apply as if references to the Permanent Works were references to any section of the Permanent Works identified in the Specification.

17.2. As soon as the Contractor considers that the Permanent Works is substantially complete and ready for the carrying out of any tests, including but not limited to Take Over tests specified in Schedule 4 (*Take Over procedures*), he shall notify in writing Sembcorp's Representative. Where the Contract provides for Sembcorp's Representative to witness any test, the Contractor shall not proceed with such test unless he has given Sembcorp's Representative not less than five (5) working days' notice of its intention to commence such test. If Sembcorp's Representative does not attend the test, such non-attendance shall not affect the validity of the results of such test.

17.3. When the tests, including any necessary repeat tests following the correction of Defects in the Works being tested, have been successfully carried out, the Contractor shall notify in writing Sembcorp's Representative that he considers the Permanent Works to be completed in accordance with the Contract and shall request Sembcorp's Representative to issue a Take Over Certificate with respect thereto.

17.4. Within seven (7) days of receipt of the Contractor's request Sembcorp's Representative shall either:

- (a) issue a Take Over Certificate in respect of the Permanent Works to the Contractor and to Sembcorp (provided that Sembcorp's Representative shall not be under any obligation to issue a Take Over Certificate for a section of the Works which, in the absence of other sections, would be of no use or benefit to Sembcorp); or
- (b) notify in writing the Contractor of deficiencies to be remedied before a Take Over Certificate will be issued.

If Sembcorp's Representative notifies the Contractor of deficiencies pursuant to Clause 17.4 (b), the Contractor shall promptly correct such deficiencies in accordance with Clause 18 (*Defective work*) and notify in writing Sembcorp's Representative when they are remedied and resubmit its request for a Take Over Certificate to be issued.

Sembcorp's Representative may, at its option, issue a Take Over Certificate for the Permanent Works or any section thereof notwithstanding that some minor amount of work or some deficiency not affecting safe use or subsequent work by others remains to be done or requires correction by the Contractor. Such outstanding minor work or deficiencies shall be identified in a list appended to the Take Over Certificate.

17.5. The date shown upon a Take Over Certificate shall be the date of Take Over.

17.6. Upon the issue of any Take Over Certificate, Sembcorp shall take over and become responsible for the care and maintenance of the Permanent Works to which the certificate relates.

17.7. The issue by Sembcorp's Representative of a Take Over Certificate shall not be construed as conclusive evidence that the Permanent Works fully conform to the requirements of the Contract.

17.8. If, at any time prior to the issue of a Take-Over Certificate, Sembcorp's Representative believes that the Works are not in accordance with the Contract, he shall be entitled to request the Contractor to open up or uncover any of the Works which has been hidden or covered up to enable an inspection to be carried out. Such inspection shall be at Sembcorp's reasonable cost and/or shall entitle the Contractor to claim a reasonable extension of time for Completion of the Works unless an error or defect is found in such works in which case, the Contractor shall not be entitled to claim any addition to the Contract Price and/or any extension of time for Completion of the Works.

17.9. To preserve the inspection right in Clause 17.8, the Contractor shall give notice to Sembcorp's Representative whenever the Works (or any part thereof) are ready and before they are covered up or otherwise put out of sight of testing possibilities. Sembcorp's Representative shall then either carry out the inspection without delay or promptly notify the Contractor that he does not wish to inspect. If the Contractor fails to give notice pursuant to this Clause 17.9, it shall if and when required by Sembcorp, uncover, reinstate and thereafter make good at its own cost.

17.10. Notwithstanding the other provisions of this Clause 17, the Contractor shall not be entitled to the issue of a Take-Over Certificate unless and until it has provided two (2) copies of the Operating & Maintenance Manuals to Sembcorp.

18. Defective work

18.1. If at any time before the Permanent Works is Taken Over in accordance with Clause 17 (*Tests and Taking Over*) or during the Defects Liability Period, Sembcorp's Representative:

- (a) determines that any Permanent Works furnished by the Contractor contains a Defect under the terms of the Contract; and
- (b) as soon as reasonably practicable notifies the Contractor of the particulars of the Defect;

the Contractor shall as soon as reasonably practicable make good the Defects so notified and Sembcorp shall so far as may be necessary place the Permanent Works at the Contractor's disposal for this purpose. The Contractor shall, if so required by Sembcorp's Representative, submit its proposals for making good any Defect to Sembcorp's Representative for its approval.

- 18.2. If any Defect arises from any breach of the Contract by the Contractor the Contractor shall bear its own cost of making good the Defect in the Works.

In the case of any other matter made good by the Contractor, the work done by the Contractor shall be the subject of a Variation.

- 18.3. If Defects in the Works are not corrected by the Contractor in the required period or if Sembcorp considers that the presence of the Contractor at the Site to carry out remedial work is not appropriate for operational or safety reasons, Sembcorp may, after giving the Contractor reasonable notice of its intention, carry out the necessary remedial work himself or arrange for it to be carried out by others. In this event, the Contractor shall reimburse Sembcorp an amount reasonably equal to those costs that would have been incurred by the Contractor in accordance with Clause 18.2 had he been required to undertake the remedial work himself.
- 18.4. If, pursuant to Clause 18.2, the Contractor is required to make corrections, repairs or replacements to any part of the Works that has been put into operational service by Sembcorp, Sembcorp shall ensure that there is a safe working environment at and around the corrections, repairs or replacement of the Permanent Works prior to the Contractor commencing such corrections, repairs or replacements.
- 18.5. Where the Contractor is required to make good Defects which arise from any breach by the Contractor, the provisions of this Clause 18 shall apply to the portion of the Works so repaired or replaced until the expiration of the Defects Liability Period or twenty-four (24) months from the date of such repair or replacement, whichever is the later.

19. Final acceptance

- 19.1. Following the end of the Defects Liability Period or, in the case of sectional completion, the last such period, and when the Contractor considers that any outstanding minor work identified in the Take Over Certificate in accordance with Clause 17.4 (*Tests and Taking Over*) and/or any making good of Defects under Clause 18.1 (*Defective Work*) has been carried out, the Contractor shall so notify in writing Sembcorp's Representative and request him to issue a Final Certificate.
- 19.2. Sembcorp's Representative shall, within fourteen (14) days of receipt of the Contractor's notice, either:
- (a) issue a Final Certificate as requested by the Contractor; or
 - (b) require the Contractor to complete any remedial and/or outstanding work required under Clause 18 (*Defective work*) or Clause 17.4 (*Tests and Taking Over*).

Following the completion of any remedial or outstanding work ordered pursuant to (b) above, the Contractor shall resubmit his request for a Final Certificate.

- 19.3. The Final Certificate shall constitute conclusive evidence for all purposes and in any proceedings whatsoever between Sembcorp and the Contractor that the Contractor has completed the Works and made good Defects in accordance with its obligations under the Contract. No Final Certificate shall be conclusive as stated above if it was procured by any fraud on the part of the Contractor or any Subcontractor.

20. Contract Price

- 20.1. Sembcorp shall pay the Contractor the Contract Price as stated in the Contract Agreement and in accordance with Clause 21 (*Payment*).
- 20.2. The Contract Price excludes VAT, local or sales taxes and to the extent that these taxes are properly chargeable, Sembcorp shall pay such taxes in addition to payments otherwise due to the Contractor.
- 20.3. The interim and final valuations of the Works shall be calculated by application of Schedule 5 (*Contract Price and payment*).
- 20.4. The Parties agree that the payment mechanism as set out in Clause 21 (*Payment*) is an adequate mechanism for payment and that the periods for payment are fair and reasonable having regard to the nature of the Works.

21. Payment

- 21.1. Sembcorp shall pay the Contractor the Contract Price in instalments as provided in Schedule 5 (*Contract Price and payment*).
- 21.2. If any instalment is to be paid upon the completion of a specified task or milestone, the Contractor shall only be entitled to apply for payment for that instalment when he can provide evidence of completion of the task or milestone as stated in Schedule 5 (*Contract Price and payment*).
- 21.3. The Contractor shall submit a request for payment to Sembcorp's Representative on the final Friday of each calendar month showing:
- (a) the Contractor's assessment of the amount to be paid for Works carried out up to the end of the period for which it is submitted, together with any other scheduled payment as may have become payable;
- plus
- (b) the amounts to which the Contractor considers himself entitled in connection with all other matters for which provision is made under the Contract;
- less
- (c) the total of all sums previously certified by Sembcorp's Representative for payment;
- less
- (d) any relevant repayment of the Advance Payment made pursuant to Clause 21.12.

The Contractor's request for payment shall be supported by a proper and valid VAT invoice for the sum requested by the Contractor for payment and all relevant documentary evidence appropriately itemised.

The Contractor's final request for payment shall state that it is its final request for payment.

- 21.4. Within fourteen (14) days of the receipt of an interim request for payment, or in the case of the final request for payment within forty-five (45) days of its receipt, Sembcorp's Representative shall issue a certificate to the Contractor and Sembcorp for the instalment to which the request for payment relates. The certificate shall show the sum which Sembcorp's Representative considers to be due at the payment due date determined in accordance with the Contract, and the basis on which it has been calculated. It is immaterial that the amount then considered to be due may be zero. The total certified shall comprise all sums listed in the Contractor's request for payment which, in the opinion of Sembcorp's Representative, are properly payable under the Contract and shall show separately any elements within the sums certified in respect of nominated Subcontractors. Sembcorp's Representative may in any certificate delete, correct or modify any sum previously certified by him as he shall consider proper.
- 21.5. Any sum certified and notified as due in accordance with Clause 21.4 shall be due for payment fourteen (14) days (or forty-five (45) days in the case of the final request for payment) after the date of receipt by Sembcorp's Representative of the Contractor's request for payment in accordance with Clause 21.3. Sembcorp shall pay the amount so notified by a date (the Final Date for Payment) which shall be forty-five (45) days (or sixty (60) days in the case of the final request for payment) after the date of receipt by Sembcorp's Representative of the Contractor's request for payment in accordance with Clause 21.3.
- 21.6. If for any reason Sembcorp, or Sembcorp's Representative on his behalf, fails to notify in writing the sum due in accordance with Clause 21.4 by the payment due date determined in accordance with Clause 21.5 the sum notified by the Contractor in its request for payment in accordance with Clause 21.3 shall be due for payment by the Final Date for Payment.
- 21.7. If Sembcorp intends to pay less than the sum due in accordance with Clause 21.4 or 21.6 for any reason including but not limited to sums that may be due from the Contractor to Sembcorp under the Contract, Sembcorp shall give Notice to the Contractor not later than one (1) day before the Final Date for Payment, specifying the amount he considers to be due on the date the Notice is given and the basis on which that sum is calculated. It is immaterial that the amount then considered to be due may be zero (0).
- 21.8. If Sembcorp does not make payment in full by the Final Date for Payment of the amount of an instalment:
- (a) certified and notified in accordance with Clause 21.5; or
 - (b) where applicable in accordance with a notice issued under Clause 21.7; or
 - (c) where applicable in accordance with Clause 21.6;
- or if either party does not make any payment due under any other provision of the Contract by the Final Date for Payment the amount not paid shall bear interest at the rate set out in the Contract Agreement, compounded daily from the Final Date for Payment until the amount not paid is received by the other party.
- 21.9. If Sembcorp does not make payment in full by the Final Date for Payment of the amount of an instalment:
- (a) certified and notified in accordance with Clause 21.5; or
 - (b) where applicable in accordance with a notice issued under Clause 21.7; or
 - (c) where applicable in accordance with Clause 21.6;
- the Contractor may issue to Sembcorp a Notice of its intention to suspend performance of any or all of its obligations under the Contract. If such failure shall continue for fourteen (14) days after the giving of such notice, then at any time thereafter and provided such failure is still continuing, the Contractor may suspend further performance of any or all as applicable of its obligations under the Contract until payment is made.
- Sembcorp's Representative shall determine by means of a Variation Order an extension to the Approved Programme and appropriate dates in Schedule 3 (*Times and stages of Completion*) for the full period of suspension plus any reasonable additional time incurred by the Contractor in resuming its obligations and those of its Subcontractors. If the Contractor incurs additional cost as a result of such suspension and subsequent resumption he shall be entitled to be reimbursed such additional cost as he reasonably incurs.
- 21.10. If the suspension of performance of any, but not all, of the Contractor's obligations in accordance with Clause 21.9 continues for a period of sixty (60) days the Contractor at any time thereafter may with immediate effect notify in writing Sembcorp that such obligation is excluded from the Contract. Thereafter Sembcorp's Representative shall by means of a Variation Order confirm the exclusion together with the applicable change in the Contract Price.
- If the suspension of performance of all of the Contractor's obligations in accordance with Clause 21.9 continues for a period of sixty (60) days, the Contractor at any time thereafter may with immediate effect terminate its employment under the Contract by the issue of a Notice to Sembcorp copied to Sembcorp's Representative and thereupon the rights and obligations of the parties shall be as stated in Clause 23.2.
- 21.11. If the amount of a payment which is:
- (a) notified in accordance with Clause 21.4 (and no notice is given by Sembcorp under Clause 21.7 in respect of such payment); or
 - (b) stated in a notice given by Sembcorp under Clause 21.7 is referred to an adjudicator appointed in accordance with Clause 29 (*Adjudication*) and if the decision of the adjudicator as to the amount which is to be paid by Sembcorp is that more shall be paid than the amount stated as in (a) or (b) as applicable, the additional amount shall be paid not later than:
 - (i) seven (7) days from the date of the adjudicator's decision; or

- (ii) the Final Date for Payment,
whichever is the later.

- 21.12. Where so required under Schedule 5 (*Contract Price and payment*) and subject to the Contractor (at its own cost) providing to Sembcorp an Advance Payment Bond in an amount equal to the Advance Payment and in the form attached at Schedule 7 (*Form of Security*) or such other form as approved by Sembcorp, Sembcorp will make an Advance Payment towards the Contract Price.
- 21.13. The Contractor shall ensure the Advance Payment Bond is valid and enforceable until the Advance Payment has been repaid. The Advance Payment shall be repaid to Sembcorp by way of a percentage deduction from each interim payment until such time as the Advance Payment is repaid. If any part of the Advance Payment has not been repaid by the date for application of the final payment certificate, the amount of the Advance Payment not yet paid shall become immediately payable by the Contractor to Sembcorp.

22. Suspension

- 22.1. Sembcorp's Representative may instruct the Contractor to suspend performance of all or any part of the Works for any reason whatsoever and the Contractor shall comply with such instruction. Sembcorp's Representative shall state in any such instruction the reason for the suspension. On receipt of such an instruction, the Contractor shall immediately advise Sembcorp's Representative of any part of the Works which needs to be continued to maintain the safety and security of the Permanent Works and/or the Works.
- 22.2. Sembcorp's Representative may subsequently instruct the Contractor to resume some or all of the suspended Works. Upon receipt of such an instruction the Contractor shall resume such Works as are ordered to be resumed as soon as is reasonably practicable.
- 22.3. Any extension of the relevant dates or periods stated in Schedule 3 (*Times and stages of Completion*) notified by Sembcorp's Representative in accordance with Clause 9 (*Delays*) shall take account of the additional time required by the Contractor in re-establishing its activities and those of its Subcontractors.
- 22.4. If the Contractor incurs any additional cost as a consequence of complying with an instruction to suspend any part of the Works given by Sembcorp's Representative, other than an instruction given by reason of the Contractor's default, he shall be entitled to any reasonable additional costs (which shall not include profit).

23. Termination

- 23.1. Sembcorp reserves the right at any time to terminate the Works, or any part thereof, for any reason whatsoever (other than under Clauses 23.3 or 23.4) by giving the Contractor seven (7) days' written notice specifying the date of termination. The Contractor shall cease performance of the Works or the relevant part of the Works, as the case may be, by no later than the expiry of the period of notice, but shall continue to perform that part, if any, of the Works which is not terminated. Termination of part of the Works shall not limit or waive the Contractor's responsibility pursuant to Clause 14 (*Site working conditions*) with respect to the remaining Works which have not been terminated.
- 23.2. In the case of termination under Clauses 9.11 (*Delays*), 21.10 (*Payment*) or 23.1 Sembcorp shall pay the Contractor in respect of the Works satisfactorily performed up to the date of termination together with any other reasonable associated direct costs incurred by the Contractor.
- 23.3. If the Contractor shall be in default in the performance of its obligations under the Contract, then Sembcorp's Representative may issue a Notice to the Contractor specifying the nature and extent of such default. Should the Contractor fail to correct such default or to commence and diligently pursue such correction within a period of seven (7) days (or such other longer period as the Notice shall specify) after such Notice, or the such default by its very nature is not capable of being corrected, then Sembcorp may, without prejudice to any other rights or remedies he may have, terminate the employment of the Contractor by giving Notice specifying the date of such termination.
- 23.4. If the Contractor goes into bankruptcy or liquidation (other than a voluntary liquidation or winding-up for the purpose of amalgamation) or has an administration order made against him or carries on its business or any part of it under an administrator or receiver or manager for the benefit of its creditors or any of them, or if any act is done or event occurs which (under applicable laws) has a similar or analogous effect to any of these acts or events then, without prejudice to any other rights or remedies which he might possess, Sembcorp may, at its option, either terminate the employment of the Contractor or give such administrator, receiver, liquidator or other person the option of completing the Contractor's obligations under the Contract.
- 23.5. In the event of termination under Clauses 23.3 or 23.4, Sembcorp shall have the right to complete the Works or to employ others to complete the Works and to recover from the Contractor all costs incurred by Sembcorp in excess of those costs that he would have reasonably and properly incurred had the employment of the Contractor not been terminated.
- 23.6. Without prejudice to Sembcorp's other rights under the Contract, in the event of termination of the Contract for any reason, the Contractor shall remove all Contractor's Equipment, surplus material, wreckage and rubbish from the Site and shall leave the Site and the Works in a clean and safe condition.

24. Limitation of liability

- 24.1. Notwithstanding any other provision of the Contract neither the Contractor nor Sembcorp shall be liable to the other for:
- (a) wastage, loss or contamination during its use in the Works of any process consumable which shall be deemed to include feedstocks, chemicals, biochemicals, catalysts and utilities; and
- (b) loss or deferment of anticipated or actual profit, loss of revenue, loss of use, loss of production, business interruption or any similar damage or for any consequential or indirect losses of any kind resulting from or arising out of or in connection with the Works or the performance of them or any act or omission relating to them however caused;

except in respect of:

- (i) recoveries obtained as a result of the insurance provided under Clause 16 (*Insurance*); or
 - (ii) any sum included within the Delay Liquidated Damages under Clause 9.8 (*Delays*); or
 - (iii) any profit that the Contractor is entitled to pursuant to the terms of the Contract; or
 - (iv) any such losses suffered by a third party (excluding any entity within Sembcorp's Group or the Contractor) to the extent included in any award for damages to or settlement with the third party in connection with a claim covered by the indemnities under Clauses 3.3 (*Contractor's responsibilities*), 13.6 (*Health, safety and environment*) and 15.6 (*Care of the Works*); or
 - (v) any breach of the obligations contained in Clause **Error! Reference source not found.** (*Intellectual Property Rights*), Clause 11 (*Confidentiality*) or Clause 26 (*Compliance*); or
 - (vi) any express indemnity contained in the Contract.
- 24.2. Any exclusion or limitation of liability under the Contract shall as between the parties exclude or limit such liability in misrepresentation, contract, tort/delict including negligence or otherwise and shall apply whether or not either party shall be held to have repudiated the Contract.
- 24.3. Any exclusion or limitation of liability shall only apply to the extent permitted by law.
- 24.4. The total aggregate liability of the Contractor to Sembcorp arising out of or in connection with the Contract and the Works, other than:
- (i) the Contractor's liability to Sembcorp in connection with any third party claims;
 - (ii) the Contractor's liability to Sembcorp in connection with any damage to any property of Sembcorp or any third party;
 - (iii) the Contractor's liability to Sembcorp under Clause 26 (*Compliance*);
 - (iv) the Contractor's liability to Sembcorp under any express indemnity provisions set out in the Contract;
 - (v) in respect of any costs, losses and/or expenses which the Contractor is obliged to expend in carrying out any repair, reinstatement and/or replacement of all or any part of the Works as a result of a failure of the Contractor to comply with its obligations under Clause 18 (*Defective work*) and/or Clause 19 (*Final acceptance*); and
 - (vi) in respect of recoveries obtained as a result of the insurance provided under Clause 16 (*Insurance*), or would have been recoverable but for the Contractor's or any subcontractor's failure to comply with the Contract or the terms of such insurance policies (including a failure to diligently pursue insurance claims or causing such insurance policies to become void, unenforceable or impaired), provided that the sums referred to under this Clause 24 (*Limitation of Liability*) as not counting towards the relevant cap shall not exceed the amounts required to be covered under such policies to be procured and maintained by the Contractor in accordance with Clause 16 (*Insurance*)

shall not exceed the amount stated in the Contract Agreement.

For the purposes of this Clause 24.4 (*Limitation of Liability*) any deduction from or abatement of the Contract Price to which Sembcorp may become entitled as a result of:

- (a) a Defect; or
- (b) any other failure of the Contractor to comply with the terms of the Contract;

shall be deemed to be a liability of the Contractor to Sembcorp.

25. Disputes

- 25.1. Sembcorp and the Contractor shall endeavour to avoid the escalation of problems into disputes as defined in Clause 25.3 and to avoid disputes both between themselves and with third parties including Subcontractors. The Parties acknowledge and agree that this shall not prejudice any right either party may have under Clause 29 (*Adjudication*) to refer any dispute or difference to adjudication at any time, if that party so wishes, notwithstanding the provisions of Clause 25.3.
- 25.2. If the Contractor is dissatisfied with any decision, instruction, direction, certificate or valuation of Sembcorp's Representative or if Sembcorp or the Contractor is dissatisfied with any other matter arising under or in connection with the Contract or the carrying out of the Works, either party may at any time refer such dissatisfaction to Sembcorp's Representative giving full details of the nature of the matter. Sembcorp's Representative shall give a written decision on the matter (giving the reasons for such decision) within twenty-eight (28) days of such reference to him.
- 25.3. Sembcorp and the Contractor agree that no matter shall constitute, nor be said to give rise to, a '**dispute**', which shall include any difference, unless the same has been referred to Sembcorp's Representative under Clause 25.2 and:
- (a) Sembcorp's Representative has failed to give his decision on the said matter within the prescribed time; or
 - (b) a decision given within the prescribed time is either unacceptable to the Contractor and/or Sembcorp or has not been implemented within twenty-one (21) days of the said decision;
- and, as a consequence, either the Contractor or Sembcorp has served Notice setting out the nature of the dispute (hereinafter called a '**Notice of Dispute**') on the other with a copy to Sembcorp's Representative. For the purposes of the performance of the Works and all matters arising out of or in connection with the Contract, the word '**dispute**' shall be construed in accordance with this Clause 25.3.
- 25.4. Notwithstanding the existence of any dispute or any reference to Sembcorp's Representative under Clause 25.2, Sembcorp and the Contractor shall continue to perform their obligations under the Contract.

- 25.5. The parties shall attempt in good faith to negotiate a settlement of any dispute or difference.
- 25.6. If a dispute cannot be resolved by negotiation the parties may by agreement refer it to mediation in accordance with the procedures of an appropriate body.
- 25.7. No decision, opinion, instruction, direction, certificate or valuation given by Sembcorp's Representative shall disqualify him from being called as a witness and giving evidence before an adjudicator or court on any matter whatsoever relating to the dispute.
- 25.8. In order to avoid disputes both between themselves and with third parties including Subcontractors and to facilitate their clear definition and early resolution, the procedures set out in this Clause 25 and in Clause 28 (*Adjudication*) shall be applied as appropriate.

26. Compliance

- 26.1. In performing its obligations under the Contract, the Contractor shall comply with:
- (a) all applicable Legislation and the Contractor will inform Sembcorp as soon as it becomes aware of any changes in Legislation;
 - (b) Sembcorp's policies listed at the following website: <https://www.sembcorpenergy.co.uk/policies-and-conditions/>, as added to or amended from time to time. For the avoidance of doubt, all obligations set out in such policies that are stated to apply to Sembcorp's employees will apply equally to the Contractor. **It is the Contractor's responsibility to regularly check this website and ensure it has read and fully understands its obligations under the listed policies (copies of which are linked from this website), including any new or updated policies added from time to time;** and
- 26.2. Without prejudice to the generality of the foregoing, the Contractor warrants and represents that, in connection with the Contract:
- (a) it shall observe and comply with all applicable Anti-Bribery Laws and shall ensure that, at all times during the Contract:
 - (i) it implements adequate procedures designed to prevent it, its employees, agents or Subcontractors from engaging in any activity which would constitute an offence under the Bribery Act 2010 if it were carried out in the UK, or violate any applicable Anti-Bribery Laws; and
 - (ii) it reports to Sembcorp any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract.
 - (b) neither it nor its Affiliates, directors, employees, agents, contractors and sub-contractors have requested, made, offered or authorised or will make, offer or authorise any payment, gift, promise or other advantage, whether directly or through any third party, to or for the use or benefit of any Official or any person where such payment, gift, promise or other advantage would:
 - (i) comprise a facilitation payment;
 - (ii) induce or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the Contract or showing or forbearing to show favour or disfavour to any person in relation to the Contract; and/or
 - (iii) violate any applicable Anti-Bribery Laws.
 - (c) no improper financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by Sembcorp or any third party) by or on behalf of the Contractor, its employees, agents or Subcontractors.
 - (d) it has not nor will it seek to criminally evade tax (whether in the UK or elsewhere) in connection the performance of its obligations under the Contract (nor pursuant to any separate agreements with Sembcorp) and that it is not aware of any 'associated person' (otherwise having involvement with the performance of its obligations under the Contract) so criminally evading tax (as '**criminally evading tax**' and '**associated person**' are understood in the context of the Criminal Finances Act 2017).
 - (e) for Works identified by Sembcorp that compliance to cybersecurity is required, it shall comply with all security by design methodology and any additional cybersecurity related policy, guidelines or procedures, in each case as may be prescribed by Sembcorp's Personnel to it.
 - (f) It shall provide Sembcorp with at least seven (7) days prior written notice for any planned maintenance, repairs or changes to its systems, applications or processes that may affect Sembcorp's business operations and/or security controls ("**Planned Changes**"). Within seven (7) days after the completion of the Planned Changes, it shall conduct an internal review of its systems, applications or processes and provide a written statement to Sembcorp confirming that Sembcorp's business operations and/or security controls are not negatively or adversely impacted by the Planned Changes. Should the Planned Changes result in any negative or adverse impact to Sembcorp's business operations and/or security controls, it shall, at its own cost and expense, within fourteen (14) days, make the necessary rectification and changes to ensure that the effectiveness of Sembcorp's business operations and/or security controls is at the same level and standard as it was prior to the Planned Changes.
 - (g) Notwithstanding anything to the contrary, it shall upon knowledge of any security incidents, breach or non-compliance of Clauses (d) to (h) above, the Data Protection Legislation, the Data Security Legislation, and/or Sembcorp's IT security policy (if applicable), notify Sembcorp as soon as possible and in any event, no later than twenty-four (24) hours of becoming aware of such breach or non-compliance. The notification to be provided to Sembcorp hereunder shall, to the extent that such information is available, include all relevant information relating to the breach and/or non-compliance which shall include but is not limited to (i) the cause of such breach or non-

compliance, (ii) the severity and impact of such breach and/or non-compliance and (iii) the mitigation plans to be undertaken by it.

- (h) In the event of any breach or non-compliance under Clause 26.2(g), it shall assist and cooperate with Sembcorp by providing all relevant information including but not limited to activity records, logs and/or conducting electronic discovery and, if requested by Sembcorp, at its own costs and expenses, immediately appoint a third party (to be approved by Sembcorp) investigate the cause of and to assess the severity and impact of the breach and/or non-compliance upon such occurrence.
 - (k) it will:
 - (i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - (ii) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.
- 26.3. The Contractor confirms and acknowledges that its appointment by Sembcorp is expressly made on the basis that the Anti-Bribery Laws would not be violated and that it shall conduct itself in a manner consistent with Sembcorp's Supplier Code of Conduct (available at <http://www.sembcorpenergy.co.uk/pdfs/supplier-code-of-conduct-sembcorp.pdf>), which may be updated from time to time.
- 26.4. The Contractor represents and warrants that at all times, it, its Affiliates and their respective directors, employees, agents and subcontractors is not an Official or other person who could assert illegal influence on behalf of Sembcorp or its Affiliates. If any of the foregoing becomes an Official, the Contractor shall promptly notify Sembcorp.
- 26.5. The Contractor undertakes to immediately notify Sembcorp if in connection with the Contract it receives or becomes aware of any request from an Official or any other person asking for, receiving or attempting to obtain gratification or financial or other advantage for themselves or for others, including those mentioned in Clause 26.2(b). In this regard, the Contractor may notify Sembcorp of any instances of non-compliance that it encounters (fraud, bribery or any other illegal acts) by email to gia.cases@sembcorp.com.
- 26.6. The Contractor warrants, represents, and undertakes it, its Affiliates and their respective directors, officers or employees shall:
- (a) comply with all Applicable Sanctions;
 - (b) will not conduct business with individuals, entities, organizations or countries that are targets of any Applicable Sanctions and shall not, directly or indirectly, make funds available to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities or any person, or in any country or territory, that at the time of such funding is subject to any Applicable Sanctions; and
 - (c) are not the subject or the target of any Applicable Sanctions.
- 26.7. The Contractor shall declare to Sembcorp all work or relationships that may give rise to any conflicts of interest between itself and Sembcorp before and during the term of the Contract. Subject to any restrictions imposed by law or confidentiality obligations, the Contractor shall declare the existence of any pending or ongoing litigation against the Contractor which will materially affect its ability perform the Works.
- 26.8. Both parties will comply with all applicable requirements of the Data Protection Legislation. Clauses 26.8 to 26.11(a) (inclusive) are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 26.9. The parties acknowledge that for the purposes of the Data Protection Legislation, Sembcorp is the Controller and the Contractor is the Processor.
- 26.10. Without prejudice to the generality of Clause 26.8, Sembcorp will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of the Contract.
- 26.11. Without prejudice to the generality of Clause 26.8, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of Sembcorp unless the Contractor is required by the law of the United Kingdom or a part of the United Kingdom to otherwise process that Personal Data. Where the Contractor is relying on the law of the United Kingdom or a part of the United Kingdom as the basis for processing Personal Data, the Contractor shall promptly notify Sembcorp of this before performing the processing required by such law unless such law prohibits the Contractor from so notifying Sembcorp;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Sembcorp, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

- (d) not transfer any Personal Data outside of the UK unless the prior written consent of Sembcorp has been obtained and the following conditions are fulfilled:
 - (i) Sembcorp or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Contractor complies with reasonable instructions notified to it in advance by Sembcorp with respect to the processing of the Personal Data;
 - (e) assist Sembcorp, at Sembcorp's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify Sembcorp without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of Sembcorp, delete or return Personal Data and copies thereof to Sembcorp on termination of the Contract unless required by the law of the United Kingdom or a part of the United Kingdom to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with Clauses 26.8 to 26.12 (inclusive) and allow for audits by Sembcorp or Sembcorp's designated auditor and immediately inform Sembcorp if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.
- 26.12. The Contractor shall not appoint or make any changes to the appointment of any third-party processor of Personal Data under the Contract, without Sembcorp's prior written consent. Where Sembcorp gives consent to the appointment of any sub-processor, the Contractor warrants, represents and undertakes that it will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in Clauses 26.8 to 26.12 (inclusive) and in either case which the Contractor undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between Sembcorp and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 26.12.
- 26.13. The Contractor shall notify Sembcorp in writing immediately if the Contractor undergoes a change of control, the phrase '**control**' in this Clause 26.13 having the meaning given to it in s.1124 of the Corporation Tax Act 2010.
- 26.14. Any breach by the Contractor of its obligations under this Clause 26 shall for the purposes of Clause 23.3 (*Termination*) constitute a default which is not capable of correction and shall entitle Sembcorp to terminate the Contract immediately.
- 26.15. In the event Sembcorp has reason to believe that a breach of any representations and warranties and undertakings in this Clause 26 has occurred or may occur, Sembcorp may without prejudice to any other rights or remedies, either terminate the Contract, or suspend the Contract until such time as it has received confirmation to its satisfaction that no breach or non-compliance has occurred or will occur.
- 26.16. Sembcorp shall not be liable to the Contractor for any claims, losses or damages whatsoever related to its decision to terminate or suspend the Contract due to the Contractor's non-compliance with this Clause 26. Further, in the event of a breach or non-compliance with this Clause 26 the Contractor shall on demand indemnify, keep indemnified and hold harmless Sembcorp, its Affiliates, officers and personnel from and against any and all losses, damages, liabilities, claims, costs and expenses (including legal and other professional fees and expenses), fines and penalties arising out of the Contractor's representations being untrue or arising out of the Contractor's breach of any of its representations and warranties and/or undertakings or obligations in this Clause 26.
- 27. Miscellaneous**
- 27.1. Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of the Contract or the relationship between the parties, without the prior written consent of the other party, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 27.2. Nothing in Clauses 22 (*Suspension*) or 23 (*Termination*) nor the repudiation or termination of the Contract shall affect the continuing operation of Clauses [Error! Reference source not found.](#) (*Intellectual Property Rights*), 6 (*Subcontracting and third party rights*), 11 (*Confidentiality*), 15 (*Care of the Works*), 16 (*Insurance*), 18 (*Defective work*), 24 (*Limitation of liability*) and 25 (*Disputes*).
- 27.3. No inspection, testing, approval or review nor any omission to inspect, test, approve or review on the part of Sembcorp and/or Sembcorp's Representative (in each case in relation to any design and/or drawings produced by, or on behalf of, the Contractor) shall diminish any duty or liability hereunder of the Contractor.
- 27.4. If any provision of the Contract is found to be invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 27.4 shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 27.5. A waiver of any right or remedy under the Contract shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 27.6. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 27.7. Nothing in the Contract shall limit any right of Sembcorp under any statute or rule of law or of equity in the nature of set-off or abatement of price. The parties agree that where any payment is due from the Contractor to Sembcorp under or pursuant to the Contract, then Sembcorp shall be entitled to set-off and/or deduct an amount equal to such payment from any amount due from Sembcorp to the Contractor under the Contract and/or any other Contract between Sembcorp and the Contractor.
- 27.8. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 27.9. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

28. Security

- 28.1. Where specified in the Contract, the Contractor shall obtain and maintain a parent company guarantee ('**PCG**') from its ultimate holding company in respect of all its obligations under the Contract together with, if required by Sembcorp, a legal opinion confirming the validity and enforceability of the PCG in a form, and from such external counsel, as shall be approved by Sembcorp. The PCG shall be delivered to Sembcorp within fourteen (14) days following the date of the Contract, in the form as set out in Schedule 7 (*Form of Security*) or such other form as Sembcorp shall have approved.
- 28.2. Where specified in the Contract, the Contractor shall obtain and maintain, at its own cost, an on-demand performance bond ('**PB**') and/or a retention bond ('**RB**') together with, if required by Sembcorp, a legal opinion confirming the validity and enforceability of the bonds in a form, and from such external counsel, as shall be approved by Sembcorp for proper performance in the amount set out in the Contract Agreement (if any). The PB and/or the RB shall be delivered to Sembcorp within fourteen (14) days following the date of the Contract Agreement and shall be issued by an entity and from a country (or other jurisdiction) approved by Sembcorp and in the form as set out in Schedule 7 (*Form of Security*) or such other form as Sembcorp shall have approved.
- 28.3. Sembcorp shall not be required to pay any monies to the Contractor until any required PCG and/or PB and/or RB (together with any legal opinions) has been delivered, and any request for payment until such time shall not be deemed to be submitted under the Contract.

29. Adjudication

- 29.1. Notwithstanding any provision in the Contract for a dispute to be referred to the Courts of England and Wales, either party shall have the right to refer any dispute or difference (including any matter not referred to Sembcorp's Representative in accordance with Clause 25.2 (*Disputes*)) as to a matter under or in connection with the Contract to adjudication and either party may, at any time, issue a Notice (a '**Notice of Adjudication**') to the other stating his intention to do so. The ensuing adjudication shall be conducted in accordance with the edition of the 'Adjudication Rules' published by IChemE current at the time of receipt of the Notice of Adjudication.
- 29.2. Unless the adjudicator has already been appointed, he is to be appointed to a timetable with the object of securing his appointment and referral of the dispute to him within seven (7) days of the service of the Notice of Adjudication. The adjudicator shall be appointed in accordance with the Adjudication Rules.
- 29.3. The adjudicator shall reach his decision within twenty-eight (28) days of referral or such other longer period as may be agreed between the parties after the dispute has been referred.
- 29.4. The adjudicator may extend the period of twenty-eight (28) days by up to fourteen days with the consent of the party by whom the dispute was referred.
- 29.5. The adjudicator shall act impartially.
- 29.6. The adjudicator may take the initiative in ascertaining the facts and the law.
- 29.7. The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings, by arbitration or by agreement.
- 29.8. The adjudicator may correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 29.9. The adjudicator may include in his decision a direction as to the allocation of his fees and expenses as between the parties.
- 29.10. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. Furthermore, any personnel of the adjudicator acting in connection with the carrying out of the adjudication shall be similarly protected from liability.

Schedule 6: Waste Material Requirements

- 1.1. If and to the extent that the Works involve the collection, storage, handling, transportation and/or disposal of any Waste Material by the Contractor, the Contractor shall take all precautions as are necessary to ensure the safe and proper collection, handling, storage, transportation and/or disposal of any Waste Material.
- 1.2. The Contractor shall, in respect of the collection, storage, handling, transportation and/or disposal of any Waste Material:
 - 1.2.1. comply in all respect with all Legislation, regulations, binding codes and/or best practices as recognised by the waste industry (including, without limitation, under the Environmental Protection Act 1990 and the Hazardous Waste (England and Wales) Regulations 2005;
 - 1.2.2. comply with any management procedures for the disposal of waste in place from time to time in respect of the Site;
 - 1.2.3. comply with any safety requirements notified by Sembcorp from time to time;
 - 1.2.4. take all precautions as are necessary to ensure the safe and proper collection, handling, storage, transportation and/or disposal of any Waste Material;
 - 1.2.5. ensure that it is appropriately licensed and shall hold (and produce at the reasonable request of Sembcorp) all required permits and consents for the collection, storage, handling, transportation and/or disposal of the Waste Material;
 - 1.2.6. ensure that Waste Material is treated, kept and disposed of in a manner that minimises pollution of the environment and avoids harm to human health; and
 - 1.2.7. ensure that any containers provided by it for the storage of waste comply with all relevant Legislation and guarantee against leakage or spillage.
- 1.3. In the event that any land or premises owned or occupied by Sembcorp may be contaminated as a result the Contractor collecting, storing, handling, transporting and/or disposing of the Waste Material (other than by reason of the act or default of Sembcorp), then the Contractor shall immediately notify Sembcorp whereupon Sembcorp shall, where reasonably practicable, mitigate the contamination and arrange for decontamination of that area at the expense of the Contractor.
- 1.4. Sembcorp shall have the right to approve in advance any site used to treat and/or dispose of Waste Material and no such site shall be so used without the Contractor first either obtaining any necessary consent or licence (which may include the consent of the appropriate planning authority) or a licence granted by the appropriate waste regulation authority, or ensuring that such consent or licence has been obtained.
- 1.5. Property and risk in the Waste Material (to the extent permitted by statute) shall pass to the Contractor at the point of the Contractor's handling, collection or removal of such Waste Material.
- 1.6. The Contractor (without the prior consent of Sembcorp) shall not bring any Waste Material originating from any other source onto the Site, nor shall the Contractor add to Waste Material collected from Sembcorp any other substance or material prior to deposition or treatment of such Waste Material.
- 1.7. On collection of Waste Material from Sembcorp, the Contractor shall deliver to Sembcorp a receipt (in a form prepared or approved by Sembcorp) for Waste Material collected and shall complete all such documentation as may be required under statute. In particular but without prejudice to the generality of the foregoing:
 - 1.7.1. The Contractor shall not provide a Works in respect of any Waste Material unless it shall first have ensured that any necessary consent or consignment/transfer note applicable to the carriage of the Waste Material has been obtained. The Contractor shall at all times duly perform and observe any conditions attached to such a consent and any regulations applicable to such carriage.
 - 1.7.2. The Contractor shall provide to Sembcorp such information as Sembcorp shall require to enable Sembcorp properly to complete such parts of a consignment note as must be completed by a producer of special waste prior to its removal from the premises.